United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

on the Banque Fully Check by the Author, after the Robbery. The Key

75-2127

IN THE UNITED STATES COURT OF

APPEALS FOR THE SECOND CIRCUIT

NEW YORK, NY.

ROBERT LOUIS SAUNDERS
PLAINTIFF

VS.

UNITED STATES OF AMERICA et al
RESPONDENT-APPELLEES

CIVIL NO.

DOCKET NO.75-2127

BRIEF AND

APPENDIX OF PETITIONER APPELLANT

ROBERT LOUIS SAUNDERS

B
P/S

UNITED STATES ATTORNEY FOR

THE SECOND CIRCUIT COURT

OF APPEALS.

APPELLANT

ROBERT LOUIS SAUNDERS

ATLANTA GEORGIA FEDERAL

PRISON.
BOX P M B
ATLANTA GA.30315

AFFIDAVIT OF POVERTY

STATE OF GEORGIA

ss.

COUNTY OF FULTON

Comes now Robert Louis Saunders, who after being duly sworn according to law on Oath, deposes and says:

That he is a Citizen of the United States of legal age; and

That because of his poverty he is unable to pay the costs for this instant cause of action or to give any security therefore;

That he is a Pauper within the meaning of the law of (Adkins v. Dupont, 335, U.S. 331; and

That he seeks redress in good faith to obtain the relief to which he verily believe he is entitled to receive.

Wherefore, the affiant prays that this Court grant his motion for remand, and permission to proceed in Forma Pauperis, for otherwise he will be precluded relief by reason of his inability to pay the costs thereof.

Sworn and subscribed to before me this 30 day of Oct 1975

William Carr
Notary Public
Parole Officer: Authorized by the Act of July 7, 1956 to Administer Oaths (18 U.S.C. 4004).

Robert Louis Saunders
PLAINTIFF

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes now Appellant Robert Louis Saunders, in propria persona and respectfully moves this Court pursuant to the provisions of 28 U.S.C. §1915, for permission to proceed in Forma Pauperis, on the attached Motion for Reversal and Remand this case to the lower Court. Attached hereto is Affidavit of Poverty in support of the Appeal, and his indigency.

Respectfully Submitted.
Robert Louis Saunders Pro Se.

Robert Louis Saunders

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STATEMENT OF CASE FACTS

IN THE UNITED STATES DISTRICT COURT OF HARTFORD CONNECTICUT:

Feb.20,1974, appellant filed a petition for Habeas Corpus, setting forth his allegations:

That he is being unlawfully restrained in prison under Illegal Multiple Counts of sentences as appear upon the face of the Judgment of sentence and Commitment. That he has been subjected to dual punishment because of the multiple counts of sentences.

May 17,1971, the sentencing Judge Orally Announced the following sentences:

20-year on Count One (1), for bank robbery.

20-years on Count Two (2), for Gun, and

5-years on Count Four (4), to run concurrent with Count One (1), for an overall concurrent judgment of sentence or 20-years on Count One (1).

DISTRICT COURT July 31,1974;

Ruled " Petitioner was convicted in this Court May 17,1971, after a jury trial on Count (1), Charging him with committing the crime of Bank Robbery, 18, U.S.C.[2113 (a), Count Two (d) and with conspiracy under Stat.3[illegible], said sentences to run concurrent with count one. Page 3-" To be certain that there is no adverse affect on the Petitioners Parole elligibity status, the Court Orders that the Original Judgment and findings of guilty on the First Count One be, and it is hereby Vacated ....the Judgment is otherwise, in all respect,ratified, adopted and confirmed."

July 22,1975, the Court: " Appellant claim here is that he should have been brought back to the Court in person in order to correct his sentence,Title 28, U S C §2255, authorizes the Court :

"....or correct the sentence as may appear appropriate; the Court may entertain and determine such motion without requiring the production of the Prisoner at Hearing."

July 25,1975:

The Court Denied Petition stating that the Issue had been previously raised."

Aug.12,1974; Motion for Credit for Time served on Count One:

Citing ; North Carolina v. Pearce; Caifano v. United States, 7th Cir.1972. " ALL States that credit to be given for all the Time served on Concurrent sentences once they are vacated, and as Caifano at 764, United States Cite as 265, F. 236," Defendant must be grought before the Court on Re-Sentencing, CF Prince v. United States Supra, " Court's Duty, is to Re-Sentence, rather than Vacate one Part and Re-Instate another part of the original sentence."

In Benton v. Maryland, " While the Court in Benton did not resolve the question of whether prejudice beyond that inherent in being convicted of two offenses and serving Two sentences, therefore, albeit, sufficient prejudice was found in the possibility to a Habitual Criminal Statute, and have both convictions counted against him" See: Gains v. United States, on Credit for Time served on sentences Vacated."

Sept.20,1975: The Court denied Petition, by citing its Ruling July 31, 1974.

Aug.18,1975: The Court cited it's Ruling in, Civil Case NO.15,059; (D Conn. April 10,1973) and case NO-H-74-237, July 31,1974, when it vacated Count One (1).

April 1, 1975: The Court denied Motion for Modification of sentence citing Rule 35, Fed. Crim. Proc."

July 22,1975: The Court in H-75-241 stated" Since the Court simply conformed the judgment with the law as set out in Prince v. United States, and Heflin v. United States, and did not increase or make more burdensome his sentence,no useful purpose could be served by ordering him to be transfered from Atlant Georgia, to Hartford Connecticut, at public expense; the Plaintiff,s petition is without merit and his request to proceed in Forma Pauperis is denied and dismissed."

-1-

APPELLANT PRESENTS:

The the Court's unorthodox method of vacating was devised to deprive him of his rights to benefit by it,s Error, where it imposed multiple Count-sentences for a single offense. The Court's act was devised to avoid Remanding appellant for Re-Sentencing him Anew, under anew legal Judgment and Commitment.

-2-

The Court's Act of vacating Count One was intented to be fruitless and purely academic, if the Counts and Sentences Orally Announced had not been Merged into a single concurrent judgment and Commitment.Therefore, for the Court to have vacated any part of the concurrent sentence, it had to automatically vacate All of it. The Court refused to comply with the conformity procedures of Remanding and Re-Sentencing anew,or granting an Evidentiary Hearing with the law being thoroughly argued as to Fair due process, as in Benton.....Which goes into the concurrent Doctrine of sentence, and the Double Jeopardy that attaches upon vacating any part of sentence merged into a concurrent group.

-3-

July 22,1975, The Court Stated Title 28, U. S.C. §2255, authorizes the Court to correct the sentence as may appear appropriate and can entertain and determine such Motion without requiring the production of the Prisoner." This method lead to its vacating concurrently the entire Judgment which stood solely upon Count One(1),2113 (a).

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The Remedy used by the Court to vacate Count One, is legally unorthodox and totally unrelated to the remedy conformed to by the majority of the Courts, including the United States Supreme Court. After the Court vacated the Principal Count One upon which the judgment stood, the Court ruled that " The Concurrent Judgment stand as entered. ....here the Court merely confirmed the Form-of-the-Judgment,without a legal sentence, and still stands on illegal multiple Counts, as they were Orally announced May 17,1971.

-5-

Under the legal effect of the concurrent judgment the Court had no choice, but to automatically vacate the entire judgment which stood on Count One (1)....SEE, Lewis v. United States Judge Hand " Found it necessary to vacate Two (2) Counts of concurrent sentences for a single offense, and remanded Petitioner for a Re-sentencing, anew. The Appeals Court States that when the invalidity of the conviction on Count One, became apparent on appeal, which may have influenced other sentences, whether or not on direct or collateral attack, the proper Course is to vacate the entire sentence and remand for re- entencing on the valid Count,without consideration of the invalid Count. 462, F. 2d. 243, 246.

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Carson, Supra, at Page 55, note (105), " It was error for the Court to vacate merely the sentence imposed on Count one, and leave standing Count 2, and 4, or vise-versa."..ALL sentences originally imposed were invalid."

In this Instant Case, the Court failed to explain what is legally contained in the Judgment, inorder for it to be confirmed.

-7-

The Federal Prison Committee commenced Computing Good Time from Count One, May 30,1971, and declared this was legal. And after May 31,1974 the Committee started again by computting Good Time from another Count-- Count Two (2), declaring this to be legal; now that the Court has vacated Count One (1).

-8-

May 17,1971, Appellant was committed to the U.S. Attorney General for a period of 20-years on Count One, and here some three years later, the Committees is attempting to commit appellant a second time under Count Two, for the same offense. The fact remain, that the appellant was not committed on Count Two (d), because the sentencing Judge, merged Count 2, and 4, into Count One May 17,1971.

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THE RECORDS REFLECTS:

Indictment H-23, was drawn upon Count One(1)

The sentencing Judge Committed appellant to the U.S. Attorney General for a period of 20-years on Count One (1)

In Corey v. United States, the Final Judgment in a criminal case is the "Sentence."

May 30,1971, appellant commenced serving a 20-year sentence on Count One, and from this Count the Prison Committee started computing his Good Time.

-10-

The Prison Committee has failed to recognize the fact; that it is attempting to illegally Juggle sentences from one count to another; claiming it has the authority to Unmerge counts and sentences; merged by the sentencing Judge; inorder to compute his good time, the committee is using a legally dead Count two. The Court in vacating Count One, said, the judgment stands as entered; which leaves unlimited descretion and interpretations to the mind of the reader.

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The Court has not stated what sentence ,If Any, legally remain in the judgment. The Concurrent effect of the judgment makes it impossible to vacate any part of a Whole 20-year sentence; without automatically vacating ALL Counts, as they were Merged Together.

-12-

The Court and Committee is attempting to change the Concurrent Effect of the Judgment; to a Consecutive-Judgment, where each individual Count has its own Judgment, and therefore,changing the meaning of the Concurrent Judgment of Sentence and Commitment, without first vacating the Form of the Judgment imposed by the Court, which would require Re-Sentencing Anew.

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Appellant believe he is entitled to Release sought by law, as seen in Bryant v. United States; the right to be Discharged on Habeas Corpus , and also see, Baily v. U.S.

QUESTIONS:

Can the Court and Prison Committe Juggle sentences back and forth, from Count to Count; depending upon which of the counts is disposed of first?

Can the Court and Committee be allowed to Juggle sentences as they are vacated or served; this could go on indefinitely, if the Court is allowed to make such mockery out of the Judicial System ?

Can a Court Merge Counts into a Concurrent Judgment of sentence of 20-years; and be allowed to Unmerge the same Counts; back to the period when they were Orally Announced?

When does the Concurrent Effect of sentences stop, being Concurrent?

Can appellant be legally forced to serve sentences under Two-distinct Counts for the same offense?

Does this Court hold the Juggling of sentences from on count to another, as they are disposed off; to be legal?

Can the United States Attorney General hold appellant imprisoned on a Count, Other than the one he was committed to him on?

Can the appellant be compelled to serve Part of a sentence under Count One, and Part under Count Two, for the Same offense.

ISSUE

-1-

Appellant believe the Court erred in its failure to Remand him for vacating the concurrent sentence of 20year on Count One (1), which denied him the equal protection of his rights; whereas, the Court vacated the legal sentence, and are now subjecting him to cruel unusual punishment under a Second Court Two, which is legally Dead.

-2-

The Court failed to Remand him for Re-Sentencing Anew, lead to the Court vacating Automatically the Concurrent Judgment of 20-years, based on Count One (1).

ISSUE

-3-

The Court is subjecting appellant to be Twice punished under Two distinct Counts, for the Same Offense. Whereas, he has served Three (3) years on Count One (1), and after the Court vacated it, he is now serving another sentence under Count Two for the same Offense.

-4-

The Court refused to give him Credit for the Three (3) years he had served on Count One.(1).

-5-

May 17,1971, the Court Committed him to the Lawful Custody of the U.S. Attorney General for a period of 20-years on Count One (1), which was the only Count left....because all other Counts were Merged into Count One, upon which the Judgment of sentence and commitment was based.

-6-

The U.S. Attorney General has been Relieved of all lawful authority he might have had to hold appellant imprisoned under his custody; where the Court has vacated the Principal Count One....leaving him Committed on No Count at all, and the Judgment of sentence and commitment is Null And Void.

-7-

The Court is in violation of appellants Constitutional Rights, of the Fifth; Eight, and Fourteenth Amendmant....and is in further violation of the Congressional intent and purpose in the Bank Robbery Statute 2113, and also in violation of it's own Concurrent Judgment of sentence and commitment.

-8-

The Judgment and Commitment was made Null and Void on May 30,1971, when the U.S. Marshals illegally executed it upon appellant in violation of the Court's Order stipulated in the final Judgment as follows:

" The Federal sentence is to Commence upon Defendant's Release from the Connecticut State Prison."

BRIEF ARGUMENT

UNDER THE CONCURRENT DOCTRINE:

One serving a concurrent sentence is serving an equal portion of each sentence, as he serves One. In this instant Case, the Judge Merged Count 2, and 4, into Count One, and the Courts intention was that appellant serve All Three sentences as he served the 20-year sentence in Count One. And appellant commenced serving this 20-year sentence May 30,1971. And the Court July 31,1974, on its own without appellants knowledge; vacated Count One, and refused to recognize the request in his Petition, a Motion to vacate the Judgment of sentence and Commitment.

Appellant is now serving sentences under Two distinct Counts for the same offense to be twice; therefore, any disposition of the sentences had to be done Concurrently; or else, the Legal Effect of the Judgment would be changed, and thus, rendering it Null and Void.

It would indeed be ludicrous for the Court to hold that the mere Vacating of the Principal Count One; stopped the legal Concurrent effect,intented....When does the Concurrent Judgment Stop being Concurrent? There is no stipulation in the Concurrent Judgment saying as to how the sentence was to be disposed off, and if the 20-year sentence could only be disposed off, by appellant serving it; than the Court has not only violated the Judgment, but also, relieved Appellant of the burden of serving the sentence.

It would indeed be a mockery of the Judicial System, if the Court holds appellant Responsible for the Court's Act of vacating the Principal Sentence of 20-years on Count One; upon which the Judgment stood and Fell. If appellant started serving a legal sentence under Count One, and it was found by the Court to be Illegal, than all sentences imposed as a result of Count One, has to be illegal. It was not the appellant,s fault that he did not serve the sentence on Count One he commenced July 30,1971. It was not his fault the Court concurrently vacated all sentences, and it was not his fault that the Court refused to properly Re-Sentence him.

BRIEF ARGUMENT

The Counts and Sentences were Interlocked when appellant was committed to the U. S. Attorney General for 20-year on Count One (1). They were interlocked when appellant Started serving the single 20-year sentence on Count One. The Concurrent Judgment, was not imposed with the Intent of forcing appellant to serve a sentence under each Count, for the same offense.

There is no Judgment of sentence and Commitment in Back of Count 2, and 4, which he is now forced to serve. Once the Concurrent Judgment is put into legal effect(By committing him on Count One, and by starting him to serve the sentence on Count One), it does not concern itself with how the sentence is disposed off; as to the unforeseeable means by which the Court vacated it, or the appellant serving it; the Concurrent Intention must be legally effective,,and be executed acordingly.

The legality of the Concurrent effect does not Change....unless the Court vacates and Re-Sentence Anew, under a different Judgment.

The illegally Juggling of legally Dead sentences: This is being done at an expensive loss of appellants rights to equal protection against it; where the Court refused to Remand him to appear in his own defense.

Neither the Attorney General; Warden, et al, or the Federal Prison Committee, has legal Authority to Hold him on any other Count except Count One (1), now vacated....the Attorney General can not maintain lawful jurisdictional custody over him; for a different charge; offense, or Count he has not been committed to his custody on.

The Committee can not start computing Good Time from Count One; stop, and start computing Good Time from Count Two, without given appellant credit for time served on such Counts....even at this appellant is being committed Twice, without a legal Judgment and Commitment in back of Count Two.

ARGUMENT CONTINUES

Appellant alleges that if this Court allow the U.S. District Court to Ilegally Juggle sentences, already Merged concurrently, from one count to another; he will be placed in jeopardy of serving each individual sentence seperately (Consecutively),and each time one of the sentence is served or vacated; he will have to serve a sentence under another Count until all counts are disposed off, and this method can be indefinitely.

(Appellant alleges that the only possible Legal Sentence in the Group of Concurrent sentences; is the First sentence of
(20-years imposed on Count One; that is before any other sentences were merged with it. Count One (1), stood alone
(was legal....until the imposition of Count Two and Four, which made Count One Multiple. Common sense dictates to a Layman the
(fact, that Count 2, and 4, made Count One multiple; which it was not before the Merger of count 2 and 4.
(The only way a sentence under Count One (1), could be ILLEGAL, is that the sentencing Judge would have to impose a 20-year
(sentence First on Count Two, and than 20-years on Count One, and 5-years on Count Four to run concurrent, for an overall
(sentence of 20-years on COUNT TWO.
(

FIRST MOTION

Appellant move for relief from unlawful Detention at the Atlanta Federal Prison on the Grounds; that the U.S. District Court of Hartford Connecticut July 31,1974, did Vacate the Concurrent Judgment of sentence in back of Count One (1), 2113 (a), upon which he was committed to the U.S. Attorney General May 17,1971. And upon which Count One he was Committed to Atlanta Federal Prison May 30,1971. He has not been committed to the U.S. Attorney or Warden of said Prison on any other Count.

And that the Prison Committee is attempting to commit him a second time under Count Two for the same single Offense. ...in violation of his rights; whereas, the judgment in support of Count One; does not support any other Count, which were Merged into Count One-concurrently.

SECOND MOTION

Appellant moves this Court,s attention to the Judges Instruction ,and

(XXXXXXXX AMENDMENT OF THE INDICTMENT H-23:

Trial V. III Page 580: The Judge errorenously Instructed the Jurors that

" On the day of the robbery " The Simsbury Bank And Trust Company"was

insured by the F.D I C.

Sept.23,1970, it was the Avon Bank robbed; the Bank he was tried for, and the Bank the Prosecution told the Jurors appellant was accused of robbing.(1): But the Judge misled the Jurorsto believe it was the Simsbury Bank robbed. (2), to believe Exhibit (1), the F D I C Certificate and Manager presented in Court belonged to the Simsbury Bank. (3), Page 581-582; the Judge instructed the Jurors of the law and facts on Subsection (B) and (F), which are not charged in the Indictment H-23. Page 578; the Judge instructed the Jurors to believe Appellant had violated Subsection (B) and (F),. (5), to believe that appellant was indicted for violating the Statute of Aidding And Abetting, not charged in the Indictment. (6), the Trial.V.III Page 564-565, paragraph 17; the Court on its own motion dismissed the charge in Count Three (3), for Entering a Bank.....This misled the Jurors to believe the Court could prove appellant Robbed a Bank without having first entered it.

And only on Appellant's Motion could the Court have stricking any count from the records as surplusage,in the Indictment. If appelant didn't enter a bank, How could he have robbed it?

THIRD MOTION

Appellant moves this Honorable Court to Reverse and Remand on these Grounds brought to Your attention.

Tr. V.II.Page 437; Show that the legal bait money stolen from the Bank is $5,dollar bills in serial numbers.

Tr. V.III.Page 527: Show the F.B.I. Agants Testimony is in direct conflict WITH the Bank Auditors testimony; when he attempted to Link appellant with this crime, by saying he found Stolen $5,dollar bills in a Mail Package sent to appellant's Wife from Los Angles California Sept.25,1970.

Tr. V.III. Page 453-457-458-527 to 528: Concerns the Check Marks made on the Bank,s Tally Sheet by the Auditor, after the robbery. The Key Government witness Mrs.Duchaneck, testified that She and M.T. Put the Check Marks on the Bank Tally Sheet:

> F.B.I. Agant Saunders said he put the check marks on the Tally Sheet, as he counted of 30-$5 dollar bills stolen from the Bank.. ..but that he did not hear the Auditor testify the day before that those check marks were Her's.

The above Matching-Up Process which could have connected appellant with said crime completely failed, and the true credibility of the Witnesses was neve tested, as to who was telling the truth. Therefore, appellant has never been Linked, or Connected with this said crime for which he is now imprisoned:

Plus; the Prosecution never presented One (1), $5 dollar bill out of some 120-stolen from the bank....he never presented any material evidence of the $5 bills to the Jurors during the trial. Therefore, appellant have never been connected to this crime, and if there were such evidence the Prosecution suppressed it, or it never legally existed.

MOTION

Appellant moves this Court under the Supreme Court's decision, that he be allowed to Argue this case in person, or with the assistance of Counsel, if such Oral Argument deem necessary, to protect his Constitutional right to due process of the law.

Moves for a Reversal and Remand to the U.S. District Court for correction and proper disposition.

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

-vs- : Criminal No. H-23

ROBERT LOUIS SAUNDERS :

ORDER ON MOTION FOR
MODIFICATION OF SENTENCE

The defendant, Robert Louis Saunders, having addressed a letter dated March 24, 1975, to the undersigned, requesting a modification of sentence imposed on May 17, 1971; and

The Court, treating said letter as a motion for modification of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure, and having considered said motion, it is

ORDERED, that said motion be, and the same hereby is, denied.

Dated at Hartford, Connecticut, this 1st day of April, 1975.

T. Emmet Clarie
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT LOUIS SAUNDERS : H 75/126

-vs- : Civil No. ____

UNITED STATES OF AMERICA :

RULING ON MOTION
TO VACATE JUDGMENT

The petitioner's motion to set aside conviction and vacate judgment in the above-entitled matter is denied. The subject matter of the petition submitted has been previously considered and ruled upon. See prior ruling in Civil Case No. 15,059 (D. Conn. April 10, 1973), affirmed in 486 F.2d 1396 (2d Cir. 1974); also Civil Case No. H-74-31, January 30, 1974, and Civil Case No. H-74-239, July 31, 1974.

Title 28 of the United States Code, Section 2255 provides in part:

> "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

The Court finds no new or materially different claims presented in this application, beyond those which the Court has previously ruled upon. The petition is denied and dismissed. The filing fee is waived. SO ORDERED.

Dated at Hartford, Connecticut, this 18th day of April, 1975.

T. Emmet Clarie
Chief Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROBERT LOUIS SAUNDERS	:	
-vs-	:	CIVIL ACTION NO. H-75-198
UNITED STATES OF AMERICA	:	

JUDGMENT

The above-identified action came on for consideration by the Court by the Honorable T. Emmet Clarie, Chief United States District Judge;

And the Court having filed its Ruling on the Petitioner's Petition for a Writ of Habeas Corpus, denying and dismissing the Petitioner's Petition;

It is accordingly ORDERED and ADJUDGED that the Petitioner's Petition for a Writ of Habeas Corpus be and is hereby denied and dismissed.

Dated at Hartford, Connecticut, this 17th day of June, 1975.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: _____
Deputy-In-Charge

July 22

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT JUL 22 11 32 AM '75

CLERK
U.S. DISTRICT COURT
DISTRICT OF CONN.

ROBERT LOUIS SAUNDERS : H 75/241

-vs- : Civil No. _____

UNITED STATES OF AMERICA :

RULING ON MOTION
TO VACATE JUDGMENT

The plaintiff, Robert Louis Saunders, filed this § 2255 petition claiming that he is unlawfully imprisoned as a federal prisoner under multiple sentences for the same crime, bank robbery. He seeks permission to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. A similar request was previously received and denied by this Court on July 31, 1974, in Civil Action No. H-74-237. The Court's ruling which is self-explanatory, is attached herewith and incorporated herein by reference as Appendix A.

The relief sought in both petitions is the same, except that the petitioner's claim here is that he should have been brought back to Court in person in order to correct his sentence. Title 28 U.S.C. § 2255 authorizes the Court:

> ". . . or correct the sentence as may appear appropriate.
>
> "A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.
>
> "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

Since the Court simply conformed the judgment with the law as set out in Prince v. United States, 352 U.S. 322, 329 (1957), and Heflin v. United States, 358 U.S. 415 (1958) and did not increase or make more burdensome his sentence, no useful purpose could be served by ordering him to be transported from Atlanta, Georgia, to Hartford, Connecticut, at public expense.

The plaintiff's petition is without merit and his request to proceed in forma pauperis is denied. His petition is accordingly dismissed and the filing fee is waived.

SO ORDERED.

Dated at Hartford, Connecticut, this 22nd day of July, 1975.

T. Emmet Clarie
Chief Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
JUL 25 5 43 PM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

ROBERT LOUIS SAUNDERS	::::	
	::::	
vs.	::::	CIVIL ACTION NO. H-75-239
	::::	
UNITED STATES OF AMERICA	::::	

JUDGMENT

The above-entitled action came on for consideration by the Court by the Honorable T. Emmet Clarie, Chief United States District Judge,

And the Court having filed its Memorandum of Decision on July 2[illegible], 1975, denying in all respects the Petitioner's Petition for relief finding that the issues raised have previously been reviewed and resolved by the Court;

It is accordingly ORDERED and ADJUDGED that the Petitioner's Petition be and is hereby denied anddismissed.

Dated at Hartford, Connecticut, this 25th day of July, 1975.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: _____
Deputy-in-Charge

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT LOUIS SAUNDERS : H 74 287

-vs- : Civil Action No. _____

UNITED STATES OF AMERICA :

RULING ON MOTION
TO VACATE JUDGMENT

The plaintiff has filed this petition pursuant to 28 U.S.C. § 2255, claiming an improper sentence. He represents that the multiple count sentence imposed unjustly affects his institutional privileges and creates excessive conditions of punishment. He was convicted in this Court on May 17, 1971 after a jury trial, on Count 1, charging him with committing the crime of bank robbery, 18 U.S.C. § 2113(a); Count 2, assault with a dangerous weapon while stealing from a bank, 18 U.S.C. § 2113(d); Count 3 was dismissed; and Count 4, conspiracy, 18 U.S.C. § 371. It was the sentence of the Court that he should be committed to the custody of the Attorney General or his authorized representative for a period of twenty (20) years on Count 1; twenty (20) years on Count 2, and five (5) years on Count 4, said sentences to run concurrently; sentence to commence upon defendant's release from Connecticut State Prison.

The Supreme Court's interpretation of the bank robbery law establishes and its Congressional background requires a merger of the lesser counts and penalties, where a conviction is had on multiple counts under 18 U.S.C. §§ 2113(a) and 2113(d). The maximum overall penalty, which could be imposed on the bank robbery counts was twenty-five (25) years under § 2113(d), with an additional five (5) years on the conspiracy count, making a total exposure of thirty (30) years.

> "When Congress made either robbery or an entry for that purpose a crime it intended that the maximum punishment for robbery should remain at 20 years, but that, even if the culprit should fail short of accomplishing this purpose, he could be imprisoned for 20 years for entering with the felonious intent. (footnote omitted).
>
> . . . .
>
> "[T]he case [was] remanded to the District Court for the purpose of resentencing the petitioner in accordance with this opinion." Prince v. United States, 352 U.S. 322, 329 (1957).

See also, Heflin v. United States, 358 U.S. 415 (1958); Whiddon v. United States, 396 U.S. 12 (1969).

> "It is now well-established law that 18 U.S.C.A. § 2113 prohibits the imposition of more than one sentence for violations of its several provisions. . . .
>
> "We believe that it is clear in our present case, as was the situation in Green v. United States, supra, that 'the intention of the district judge was to impose the maximum

> sentence . . . for aggravated bank robbery, and the formal defect in his procedure should not vitiate his considered judgment.' 365 U.S. 301, 306, 81 S.Ct. 653, 656." Jones v. United States, 396 F.2d 66, 69 (8th Cir. 1968).

The Court's original sentence on each of the three counts was to run concurrently, and there was a merger of the guilty finding and the term on the lesser first count (18 U.S.C. § 2113(a)), with the guilty finding on the second count (18 U.S.C. § 2113(d)), which carried a greater authorized maximum penalty. To be certain that there is no adverse affect on the petitioner's parole eligibility status, the Court orders that the original judgment and finding of guilty on the first count be, and it is hereby vacated. The judgment is otherwise, in all respects, ratified, adopted and confirmed. Plainly, it was the intention of the Court then and it is the intention of the Court now, to impose an actual sentence of twenty (20) years for the bank robbery and five (5) years on fourth count for conspiracy (18 U.S.C. § 371), the sentences to run concurrently for an overall sentence of twenty (20) years. The petition is otherwise found to be without merit. It is accordingly dismissed. The filing fee is waived. SO ORDERED.

Dated at Hartford, Connecticut, this 31st day of July, 1974.

T. Emmet Clarie
Chief Judge

UNITED STATES DISTRICT COURT Aug 5

DISTRICT OF CONNECTICUT

ROBERT LOUIS S. DERS)
)
v.) CIVIL ~~CRIMINAL~~ NO. H-74-237 md
)
UNITED STATES OF AMERICA)

JUDGMENT

The above cause having come on before the Court, the Honorable T. Emmet Clarie, Chief Judge, presiding, for a hearing pursuant to a petition filed under 28 U.S.C. 2255, and the Court having filed its ruling on Motion to Vacate on July 31, 1974 finding that the First Count only be vacated in Criminal H-24, H-23

It is hereby ORDERED, ADJUDGED and DECREED that Count One of Criminal H-24 H-23 be vacated and that in all other respects the judgment and commitment stand as imposed.

Dated at New Haven, Connecticut this 5th day of August, 1974.

Clerk, United States District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROBERT LOUIS SAUNDERS)
VS) CIVIL NO. H-74-237
UNITED STATES OF AMERICA)

CORRECTED JUDGMENT

The avove cause having come on before the Court, the Honorable T. Emmet Clarie, Chief Judge, presiding, for a hearing pursuant to a petition filed under 28 U. S. C. 2255, and the Court having filed its ruling on Motion to Vacate on July 31, 1974 finding that the First Count only be vacated in Criminal H-23,

It is hereby ORDERED, ADJUDGED and DECREED THAT Count One of Criminal H-23 be vacated and that in all other respects the judgment and commitment stand as imposed.

Dated at Hartford, Connecticut this 13th day of August, 1974.

SYLVESTER A. MARKOWSKI,
Clerk, United States District Court

By
Deputy-in-Charge

JUDGMENT AND COMMITMENT (Rev.12-66) Cr.Form No.29a

UNITED STATES DISTRICT COURT
For The 94967

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA
V.
ROBERT LOUIS SAUNDERS

NO.Cr. H-23

ON THIS 17th day of May ,1971 came the Attorney for the Government and the defendant appeared in person and 1 by counsel

IT IS ADJUDGED THAT THE DEFENDANT UPON HIS PLEA OF 2 NOT GUILTY AND A FINDING OF GUILTY BY A JURY
HAS BEEN CONVICTED OF THE OFFENSE OF VIOLATION OF TITLE 18, SECTION 2113(a), 2113 (d) and 371 OF THE UNITED STATES CODE (BANK ROBBERY, ASSAULT WITH A DANGEROUS WEAPON WHILE STEALING MONEY FROM A BANK AND CONSPIRACY)

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ATLANTA PENITENTIARY
ATLANTA GEORGIA

as charged in Counts 1, 2 and 4; count 3 is dismissed
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the court,
IT IS ADJUDGED THAT THE DEFENDANT IS GUILTY AS CHARGED AND CONVICTED.
IT IS ADJUDGED THAT THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL OR HIS AUTHORIZED REPRESENTATIVES FOR IMPRISONMENT FOR A PERIOD OF 4 twenty (20) years on count One (1), twenty (20) years on count Two (2) and Five (5) years on count Four (4), said sentence to run concurrently; sentence to commence upon defendant's release from Connecticut State Prison.

IT IS ADJUDCED THAT 5

IT IS ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND COMMITMENT TO THE UNITED STATES MARSHAL OR OTHER QUALIFIED OFFICER AND THAT THE COPY SERVE AS THE COMMITMENT OF THE DEFENDANT.

THE COURT RECOMMENDS COMMITMENT TO:6

Signed Judge S/ T.Emmet Clarie
United States District Judge.
SIGNED GILBERT C. EARL
CLERK

A TRUE COPY. CERTIFIED THIS 17th day of May 1971

(Signed) GILBERT C. EARL
Clerk

BY _____ Deputy Clerk

IN THE

UNITED STATES DISTRICT COURT

DISTRICT OF HARTFORD CONNECTICUT

FILED
SEP 20 11 58 AM '74
U.S. DIST COURT
HARTFORD, CONN.

H 74 294

CIVIL ACTION

CASE NO. H-74-237
criminal case nO.H-23

ROBERT LOUIS SAUNDERS, Plaintiff

VS.

UNITED STATES OF AMERICA, Respondent

MCTION FOR HABEAS CORPUS ,RELEASE,

Pursuant to Title 28,U.S.C. §2241.

Pursuant to Ruling of July,31,1974

"The petition is denied; see previous Ruling in Civil No. H 74-237, filed July 31, 1974. The filing fee is waived. So ordered."

U.S.D.J. 9/20/74